

Case No.

Brodsky v. Shaftel

Page 1

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

*THE MATTER OF:*

JAY BRODSKY - *Plaintiff*

*-against-*

DEALER SERVICES - *Defendants*

PALMER ADMINISTRATIVE SERVICES INC., *et al*

LIBERTY AUTOMOTIVE PROTECTION., *et al*

ROYAL PROTECTION PROGRAM

AMERICAN MERCURY

WARRANTY WORLD

MICHEAL SHAFTEL

EVAN MICHEALS

JOHN AND JANE DOE *et al*

CASE NO. \_\_\_\_\_

COMPLAINT ADDENDUM

---

*Issues Before the Court, Amongst others:*

Violation of the Telephone Consumer Protection Act 1991(TCPA)

47 U.S.C.A. § 227 et seq.

Sections 5(a), 5(m)(1)(A), 13(b), and 16(a) of the FTC Act

15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b)

Section 6 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (the  
“Telemarketing Act”)

15 U.S.C. § 6105

Section 5(a) of the FTC Act, 15 U.S.C. § 45(a)

FTC Telemarketing Sales Rule (“TSR”), as amended, 16 C.F.R. Part 310

---

AFFIRMATION

1. Pursuant to the Federal Rules of Civil Procedure Rule 8 (Fed. R. Civ. P. 80), on this 21st day of August, 2018, Jay Brodsky, a/k/a, “Mr. Brodsky and resides at 240 East Shore Road, Apartment 444, Great Neck, New York 11023, duly deposes that the facts as stated herein are true to the best of his knowledge.

VENUE AND JURISTITION

2. Venue is appropriate under 28 U.S.C.A. § 1332 because, amongst other things; the plaintiff, is a resident and citizen of New York State, County of Nassau; Dealer Services, Palmer Administrative Services Inc.,

LibertyAutomotive Protection, Royal Protection Program, American Mercury, Warranty World, Michael Shaftel, Evan Micheals, John and Jane Doe's *et al*, conduct's business and directs their activities to residents of New Jersey, County of Ocean, as well as Nationwide.

3. The United States District Court for the District of New Jersey has jurisdiction over the parties because Dealer Services, Palmer Administrative Services Inc., Liberty Automotive Protection, Royal Protection Program, American Mercury, Warranty World, Michael Shaftel, Evan Micheals, John and Jane Doe's *et al*, conducts a major part of their national operations and conducts business activities from their headquarters at 3430 Sunset Avenue, Ocean, New Jersey, with an advertising budget not exceeded in other jurisdictions throughout the United States.
4. The Plaintiff brings this putative action against the defendants to secure redress for their violations of the *Telephone Consumer Protection Act*, 47 U.S.C. § 227 *et seq.* ("TCPA"), Violation of the Telephone Consumer Protection Act 1991(TCPA), Sections 5(a), 5(m)(1)(A), 13(b), and 16(a) of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), Section 6 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (the

*“Telemarketing Act”), 15 U.S.C. § 6105, Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), FTC Telemarketing Sales Rule (“TSR”), as amended, 16 C.F.R. Part 310*

5. Venue is appropriate under 28 U.S.C.A. § 1331 because, among other things; 28 U.S.C. §§ 1391(b)(1), (b)(2), (c)(1), (c)(2), (c)(3) and (d), and 1395(a), and 15 U.S.C. § 53(b); 15 U.S.C. § 53(b); 15 U.S.C. § 45(m)(1)(A) are Federal issues that can only be adjudicated within the Purview of a United States District Court.
6. The Plaintiff is one of many phone call recipients, believed to number in the ten’s of thousands, who received illegal “Spoofed” telemarketing calls promoting the automobile warranty services of the defendants.
7. The telemarketers blasted millions of robocalls to American consumers. Many of these calls were also made to consumers whose phone numbers were on the National Do Not Call (“DNC”) Registry. And many of these calls were made with inaccurate (“spoofed”) caller ID numbers. All of these calls violate the FTC’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310.

8. The Plaintiff brings this action to enforce the consumer privacy provisions of the TCPA and achieve redress and compensation for himself as a consumer. In a case such as this, where individual damages are set by statute at \$500-\$1,500 per violation, the inclusion of punitive damages are best if not the only means of obtaining redress for the type of wide-scale, illegal telemarketing at issue, and is consistent both with the private right of action afforded to the aforesaid plaintiff.
9. The Court has Federal question jurisdiction over the TCPA claims. *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740 (2012).
10. Venue is proper because one or more of the Defendants operates and conducts business in the State of New Jersey and therefore are subject to this Court's jurisdiction.

### THE PARTIES

#### Plaintiff:

11. Jay Brotsky, 240 East Shore Road, Apt. 444, Great Neck, New York 11023

#### Defendants:

12. Dealer Services, 3430 Sunset Avenue, Ocean, New Jersey 07712

13. Palmer Administrative Services Inc., (“RMG”) State I.D. 801496597,  
is a Texas corporation with its principal place of business at 3430 Sunset  
Avenue, Ocean, New Jersey 07712. Registered agent O. Murray McNeely.
14. Liberty Automotive Protection, 3430 Sunset Avenue, Ocean, New Jersey  
07712
15. American Mercury, 3430 Sunset Avenue, Ocean, New Jersey 07712
16. Warranty World, 3430 Sunset Avenue, Ocean, New Jersey 07712
17. Micheal Shaftel, President of Palmer Administrative Services Inc. and
18. Evan Micheals, Palmer Administrative Services, 3430 Sunset Avenue, Ocean  
New Jersey 07712
19. At all times material to this complaint, Michael Shaftel owned, controlled in  
fact, or was a corporate officer of Palmer Administrative Services Inc. and  
other assorted corporate entities including Dealer Services, Liberty  
Automotive Protection, Royal Protection Program, American Mercury,  
Warranty World, and personally directed their “Spoofed” telemarketing  
practices. Collectively, Mr. Micheal Shaftel and the various corporate  
entities controlled by Mr. Shaftel are referred to herein as Defendants.

20. The Defendants have conducted the business practices described herein through an interrelated network of companies that have common beneficial ownership, officers and managers, business functions, employees, and office locations, and that commingled funds. Because the Defendants business enterprise operated as a common enterprise, each of the entities that comprise it is jointly and severally liable for the violations herein.
21. Defendant Michael Shaftel has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of the Defendants business enterprises.
22. At all times material to this complaint, “Defendant’s” conducted the same business often from the same address, using the same equipment and same employees, and held themselves out to the public under the fictitious name amongst others, “Dealer Services” and “Palmer Mercedes Benz”.

### COMMERCE

23. At all times material to this Complaint, all Defendants have maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44



THE TELEPHONE CONSUMER PROTECTION ACT

24. In 1991, Congress enacted the TCPA to regulate the explosive growth of the telemarketing industry. In so doing, Congress recognized that “unrestricted telemarketing . . . can be an intrusive invasion of privacy.” Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), codified at 47 U.S.C. § 227 (TCPA). The TCPA amended Title II of the Communications Act of 1934, 47 U.S.C. § 201 et seq.
25. The TCPA’s most severe restrictions address telemarketing calls to residential and cellular telephone lines. In enacting the statute, Congress stated that banning these calls was “the only effective means of protecting telephone consumers from this nuisance and privacy invasion.” Id. § 2(10) and (12); see also Mims, 132 S. Ct. at 745.
26. Accordingly, the TCPA prohibits persons from initiating telemarketing calls to residential telephone lines and cell phones using an autodialer and then a substantial pause until a human finally delivers a message without the prior express consent of the called party, 47 U.S.C. § 227(b).



27. For autodialed telemarketing calls made to cellular telephones and landlines prior to October 16, 2013, the telemarketer must show they had a consumer's prior express consent to call via pre-recorded message.
28. For autodialed telemarketing calls made to cellular telephones and landlines on or after October 16, 2013, the telemarketer must show prior express consent through a signed writing (a) bearing the signature of the person providing consent; (b) that specifies the telephone number to which the person consenting is called; (c) clearly authorizes the company to call the person using an auto dialer for telemarketing purposes; and (d) providing consent is not a condition of purchasing goods or services. See In re Rules & Regs.
29. The TCPA regulates amongst other things, the use of automatic telephone dialing equipment commonly referred to as autodialers.
30. Pursuant to Section 227(b)(1)(A)(iii) of TCPA bars the use of autodialers to make calls to wireless numbers that are not deemed as an emergency or with prior consent of the called party.

31. Congress issued regulations to ban such calls after adjuring that automated or prerecorded phone calls are a nuisance and an invasion of privacy and such calls are also costly and inconvenient.
32. The FCC recognized that wireless customers are charged for incoming calls whether they pay in advance or payment is tendered ante ceding a call.
33. Congress outlawed telemarketing via unsolicited automated telephone calls, robocalls.

IMPLEMENTING THE TCPA, 27 FCC Rcd 1830, 1844 ¶ 33 (2012).

34. For calls made on or after October 16, 2013, an established business
35. On May 9, 2013, the FCC released a Declaratory Ruling holding that a corporation, or other entity that contracts out its telephone marketing “may be held vicariously liable under federal common law principles of agency for violations of . . . section 227(b) . . . that are committed by third-party telemarketers.”
36. More specifically, the FCC 2013 Ruling held that, even in the absence of evidence of a formal contractual relationship between the seller and the telemarketer, a seller is liable for telemarketing calls if the telemarketer “has

apparent (if not actual) authority” to make the calls. FCC 2013 Ruling, 28 FCC Rcd at 6586 ¶ 34.

37. The FCC has rejected a narrow view of TCPA liability, including the assertion that a seller’s liability requires a finding of formal agency and immediate direction and control over the third-party who placed the telemarketing call.
38. Under the TCPA, a seller of a product or service may be vicariously liable for a third-party marketer’s violations of Section 227(b), even if the seller did not physically dial the illegal call, and even if the seller did not directly control the marketer who did.
39. A seller is liable under Section 227(b) when it has authorized a telemarketer to market its goods or services.
40. Additionally, a seller may be vicariously liable for a Section 227(b) violation under principles of apparent authority and ratification.

.....

*In re Joint Petition Filed by DISH Network, LLC et al. for Declaratory Ruling Concerning the TCPA Rules, CG Docket No. 11-50, 28 FCC Rcd 6574, 6574 ¶ 1 (2013) (“FCC 2013 Ruling”).*

.....

41. The FCC 2013 Ruling further clarifies the circumstances under which a telemarketer has apparent authority:

Apparent authority may be supported by evidence that the seller allows the outside sales entity access to information and systems that normally would be within the seller's exclusive control, including: access to detailed information regarding the nature and pricing of the seller's products and services or to the seller's customer information. The ability by the outside sales entity to enter consumer information into the seller's sales or customer systems, as well as the authority to use the seller's trade name, trademark and service mark may also be relevant. It may also be persuasive that the seller approved, wrote or reviewed the outside entity's telemarketing scripts. Finally, a seller would be responsible under the TCPA for the unauthorized conduct of a third-party telemarketer that is otherwise authorized to market on the seller's behalf if the seller knew (or reasonably should have known) that the telemarketer was violating the TCPA on the seller's behalf and the seller failed to take effective steps within its power to force the telemarketer to cease that conduct.

.....

42. The FCC 2013 Ruling further held that, even in the absence of evidence of a formal contractual relationship between the seller and the telemarketer, a

seller is liable for telemarketing calls if the telemarketer “has apparent (if not actual) authority” to make the calls.

43. Michael Shaftel is personally liable for the acts alleged in this Complaint pursuant to 47 U.S.C. § 217 of the Telephone Consumer Protection Act, which reads, *inter alia*,

The act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier or user, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or user as well as of that person, 47 U.S.C. § 217 (emphasis added).

#### FIRST FACTS OF SUBSTANCE

##### *The Illegal Telemarketing Campaign at Issue*

44. At all times relevant to this Complaint, Micheal Shaftel authorized Palmer Administrative Services, Dealer Services, Liberty Automotive Protection, Royal Protection Program, American Mercury, Warranty World, to telemarket on his behalf and specifically using other surreptitious trade names. The Defendants have operated as a common enterprise while engaging in the

unlawful acts and practices alleged herein. The Defendants have conducted the business practices described herein through, an interrelated network of companies that have common beneficial ownership, officers and managers, business functions, employees, and office locations, and that commingled funds. Because the Defendants operated as a common enterprise, each of the entities that comprise it is jointly and severally liable for the acts and practices of the Defendants Enterprise. Defendant Michael Shaftel has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of the combined Defendants business enterprise.

45. The trade-marks and trade-names of the Defendants are widely recognized due to an extravagant internet and telemarketing campaign.
46. The Defendants contacted the Plaintiff by telephone on hundreds or even thousands of occasions over the last few years in an attempt to sell him an extended warranty for various vehicles no longer owned or never owned.
47. During those numerous phone solicitations the Defendants were informed by the Plaintiff that he no longer owns, leases or has any association with the vehicles described withing the inquiry or never owned any of the alleged vehicles alleged to be in his possession past of present.

Over a multi year time period the Defendants were specifically commanded to cease and desist all unsolicited telemarketing directed to the Plaintiff.

Subsequently those repeated commands/demands for privacy all fell on deaf ears. The Defendants were also commanded to remove the Plaintiff from their phone telemarketing lists. Following those requests the agent/agents for the Defendants terminated their contemporaneous phone communications which then prevented the Plaintiff from contacting the Defendants in the future. On several occasions an authorized agent for the Defendants engaged in salacious or malfeasant banter often resulting in a tense standoff between both parties.

48. On the 15th & 16th day's of February, 2018, Palmer Administrative Services contacted the Plaintiff despite being repeatedly commanded to cease and desist from engaging in any further solicitation of the Plaintiff for him to purchase an extended warranty for a car he no longer owned or never owned extemporaneously. On one such occasion Evan Michaels, an authorized agent for Palmer, was confronted. After commanding him to cease and desist he abruptly terminated the phone call. Within less than thirty (30) minutes following the prior phone call, Evan Michaels was again



commanded not to call anymore, despite Plaintiffs demand the telephone rang again. The telephone call he received used predictive or automated dialing technology, as demonstrated by the substantial pause at the beginning of the call prior to a human voice coming on the line. Mr. Brodsky said Hello approximately four times, as he waited for the party who was calling to respond. When a human finally came on the line, it was a sales associate, Evan Michaels, who identified himself as calling on behalf of Palmer Administrative Services. Even before being able to disseminate any vital personal information Evan Micheals addressed the Plaintiff by name. The Plaintiff thought it would be in his best interest to further investigate the agent by probing his intent to disclose why he kept calling? The Plaintiff, then inquired to Evan Michaels, the Palmer telemarketer:

*“Who did you say you were?” .....*

Evan Micheals replied,

*“I’m with the Palmer Warranty Administration and I’m calling about your 2013 Mercedes Benz.” .....*

Mr. Brodsky knowing he does not, nor never owned a Mercedes Benz further engaged the telemarketer for additional information to disclose his motive,

*“What is Palmer Warranty exactly?” .....*

Evan Micheals boldly retorted,

*“Palmer Warranty is part of Palmer Mercedes Benz of Atlantic City in Ocean County.” .....*

With that, the Plaintiff heard enough to disclose his motive especially knowing he does not, nor ever has owned a 2013 Mercedes Benz. The Plaintiff then sternly commanded Mr. Micheals,

*“I have been asking your company to remove my name from its call list for a long time. If you do not remove my name immediately I will file a Federal lawsuit against you and your company.” .....*

Evan Micheals replied with abundant laughter to indemnify his next statement ,

*“It makes no difference what you do. If you want to file a lawsuit, go ahead.” .....*

Evan Micheals continued to laugh until he finally terminated the phone call.

49. The unauthorized robocall placed by the Defendants invaded the Plaintiffs privacy and interfered with the use of his cellular telephone.
50. The Defendants should have been aware that the automated calling operation marketing their warranties by placing telephone solicitation calls violates TCPA.
51. The Plaintiff never contacted any of the Defendants for any purpose, and has/had no business relationship with them or anyone associated with them.
52. The Plaintiff was aware the reason for the unsolicited telemarketing calls was to market services and business to him.
53. The Plaintiff at no time granted consent to the Defendants to call or intrude on his privacy and as a result caused annoyance and an unnecessary expenditure of his time or efforts.
54. The Plaintiff is the exclusive user of the telephone numbers assigned to him ending in 1666 and 3424 and is the account holder of record for those accounts.
55. By engaging the Plaintiff with numerous minion companies, Michael Shaftel knowingly implemented the use of fictitious telephone numbers commonly referred to as “Spoofing” that mimic either the first three digits of the

number being dialing or the area code of the person who they are dialing.

This is done to lull prospective buyers into a false sense of security that the caller is located nearby and therefore maybe one of his/her neighbors in violation of FTC Telemarketing Sales Rule (“TSR”), as amended, 16 C.F.R. Part 310.

56. The Defendants purchase the names and private information from a third party in order to tailor their telemarketing to the particular products they are attempting to sell. In this particular case it is extended automobile warranties.
57. At all times relevant to this lawsuit, Michael Shaftel and the Defendants had the ability to supervise, monitor, and control the conduct of their appointed agents, but consciously turned a “blind eye” to the Defendants illegal conduct, as they simultaneously accepted the benefits of the combined Defendants illegal acts.
58. At all times relevant to this lawsuit, all of the Defendants had the authority to issue a “cease and desist” order to it’s agents and subsidiaries revoking them from marketing their products using their widely known name.

59. At all times relevant to this lawsuit, Michael Shaftel and the Defendants had the authority to issue a “cease and desist” order to it’s agents revoking their authority to tele-market on the Defendants behalf.
60. At no time did any of the Defendants issue such a “cease and desist” order to their agents, subordinates or subsidiaries.
61. At all times relevant to this lawsuit, the Defendants allowed their appointed agents, subordinates and subsidiaries to tele-market using their trade names and to post their trade marks on the Defendants websites.
62. By allowing Palmer Administrative Services, their telemarketers and their associated subsidiaries to tele-market using their trade name, and by allowing Palmer Administrative Services to use their trade-marks, the Defendants purposefully led consumers to believe that their agents and subsidiaries had the authority to act on their behalf.
63. Palmer Administrative Services and their associated subsidiaries, provided their agents advertising on its website and provided to skeptical consumers, affirming that the Defendants and their agents were, in fact, “Partners.”

SECOND FACTS OF SUBSTANCE

*The Massive Scope of Illegal Telemarketing At Issue*

64. The scope of the illegal telemarketing campaign at issue in this case is confirmed by records contained with the Federal Trade Commission Do Not Call Registry Database.
65. The Plaintiff never provided the Defendants “prior express consent” to receive autodialed telemarketing calls promoting the goods and services of the Defendants.
66. The scope of the illegal telemarketing campaign at issue is also evidenced by records of consumer complaints obtained in response to Freedom of Information Act requests.
67. In June of 2016, the United States District Court for the Northern District of West Virginia under the “TCPA” denied a motion to dismiss filed by “Got Warranty Inc.” as well as co-defendants N.C.W.C. and Palmer Administrative Services. The Defendants filed a motion to dismiss the “TCPA” class action on the ground that the Plaintiffs did not suffer concrete harm by receiving telephone calls from the defendants who implemented the use of an “Automatic Telephone Dialing System” (ATDS) to the plaintiffs

cellular telephones. The court relied on *Spokeo v. Robbins*, found to the contrary, expressly holding that, “Unwanted phone calls cause concrete harm”. The court also found “intangible harm” caused by telephone calls that violate “TCPA,” such as “invasion of privacy,” wasting a consumers time or causing risk of injury due to interruption of concentration while driving. In addition the drainage of a cellphone battery and the cost for electricity to charge the battery is concrete material harm. Therefore, a claim of this magnitude deserves to be heard in court.

68. A formal request to the Federal Trade Commission was proffered by the Plaintiff for telephone records and complaint records pertaining to present and past inquiries by consumers against “Palmer Administrative Services” and its subsidiaries for the violation of “TCPA”.

### THIRD FACTS OF SUBSTANCE

#### *The Telemarketing Sales Rule and The National Do Not Call Registry*

69. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108. The FTC adopted the original TSR in 1995,



extensively amended it in 2003, and amended certain provisions thereafter.

16 C.F.R. Part 310.

70. Amongst other things, the 2003 amendments to the TSR established a do-not-call registry, maintained by the FTC (the “National DNC Registry” or “Registry”), of consumers who do not wish to receive certain types of telemarketing calls. Consumers can register their telephone numbers on the Registry without charge either through a toll-free telephone call or online at [donotcall.gov](http://donotcall.gov). The Plaintiff registered telephone numbers ending in 1666 and 3424 with the FTC in compliance with the do-not-call list.
71. Consumers who receive telemarketing calls to their registered numbers can complain of Registry violations the same way they registered, through a toll-free telephone call or online at [donotcall.gov](http://donotcall.gov), or by otherwise contacting law enforcement authorities. The Plaintiff on hundreds of occasions filed such complaint for violations of the do-not call registry.
72. Under the TSR, a “telemarketer” is any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor. 16 C.F.R. § 310.2(ff). A “seller” means any person who, in connection with a telemarketing transaction, provides, offers to provide, or

arranges for others to provide goods or services to the customer in exchange for consideration. Id. § 301.2(dd).

73. The FTC allows sellers, telemarketers, and other permitted organizations to access the Registry online at [telemarketing.donotcall.gov](http://telemarketing.donotcall.gov), to pay any required fee(s), and to download the numbers not to call.

74. Under the TSR, an “outbound telephone call” means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution. 16 C.F.R. § 310.2(x).

75. The TSR prohibits sellers and telemarketers from initiating an outbound telephone call to numbers on the Registry. 16 C.F.R. § 310.4(b)(1)(iii)(B).

76. The TSR prohibits sellers and telemarketers from initiating an outbound telephone call to any consumer when that consumer previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered.

16 C.F.R. § 310.4(b)(1)(iii)(A).

THE LEGAL BASIS OF THE CLAIMS

77. The claims of the Plaintiff's, arise pursuant to the provisions of the TCPA, a federal statute enacted to prohibit unreasonable invasions of privacy via certain telemarketing practices.

78. There are questions of law and fact common to Plaintiff, including but not limited to the following:

(a.) Whether the Defendants violated the TCPA by engaging in advertising by unsolicited, autodialed, non emergency telemarketing calls to residential and cell telephone lines.

(b.) Whether the Defendants associates illegally tele-marketed calls to consumers throughout the United States promoted by trade name the goods or services of the Defendants.

(c.) Whether the aforementioned unsolicited ATDS tele-marketing phone calls by the Defendants associates were made "on behalf of" the Defendants.

(d.) Whether the Plaintiff is entitled to statutory damages as a result of the Defendants' actions;

(e.) Whether an agency relationship existed between Palmer Administrative Services and the Defendants;

(f.) Whether the Defendants had the ability to control the tele-marketing practices of their agents and subsidiaries;

(g.) Whether Michael Shaftel provided the Defendants with their apparent authority to tele-market on his behalf; and

(h.) Whether Michael Shaftel ratified the Defendants illegal acts.

(i) Whether the Defendants should be enjoined from engaging in such business in the future.

(j) Whether the agents or the Defendants used an artificial telephone dialing system in making non emergency call to the Plaintiff.

(k) Whether the Defendants can meet their burden of proving they obtained written consent from the Plaintiff

to make such calls; Written consent that is clearly and unmistakably stated.

CAUSES OF ACTION

COUNT I – VIOLATION OF THE TCPA: 47 U.S.C. § 227(b):  
PRE-RECORDED MESSAGES

79. The Plaintiff re-alleges and incorporates the foregoing allegations as if set forth fully herein;
80. The TCPA makes it unlawful to initiate any telephone call to any residential or cell phone telephone line using an ATDS, artificial or prerecorded voice to deliver a message without the prior express consent of the called party;
81. The Plaintiff alleges the Defendants jointly engaged in tele-marketing in violation of the TCPA's prohibition against telemarketing via ATDS;
82. The Plaintiff alleges that such violations of the TCPA were both willful and negligent;
83. The Plaintiff IS entitled to have his rights, status, and legal relations relating to the Defendants' use of tele-marketing via ATDS determined under the TCPA via this action.

COUNT II -- INJUNCTIVE RELIEF TO BAR FUTURE TCPA VIOLATIONS

84. The Plaintiff re-alleges and incorporates the foregoing allegations as if set forth fully herein;
85. The TCPA expressly authorizes injunctive relief to prevent further violations of the TCPA.
86. The Plaintiff, respectfully petition this Court to order that all Defendants, including but not limited to their employees, agents, or other affiliates, to immediately cease engaging in unsolicited tele-marketing in violation of the TCPA.

VIOLATIONS OF THE TELEMARKETING SALES RULE  
COUNT I—ASSISTING AND FACILITATING ABUSIVE  
TELEMARKETING  
ACTS OR PRACTICES IN VIOLATION OF THE TELEMARKETING  
SALES RULE (TSR)

87. The Defendants who are “seller[s]” and/or “telemarketer[s]” engaged in “telemarketing,” as defined by the TSR, 16 C.F.R. § 310.2;
88. The Defendants:

- (a.) Initiated or caused the initiation of outbound telephone calls to telephone numbers on the National DNC Registry to induce the purchase of goods or services, in violation of 16 C.F.R. § 310.4(b)(1)(iii)(B);
- (b.) Failed to transmit or cause to be transmitted to caller identification services the telephone number and name of the telemarketer making the call, or the customer service number and name of the seller on whose behalf the telemarketer called, in violation of 16 C.F.R. § 310.4(a)(8); and
- (c.) Abandoned outbound telephone calls, in violation of 16 C.F.R. § 310.4(b)(1)(iv).

**COUNT II—THE DEFENDANTS VIOLATING THE NATIONAL DO NOT  
CALL REGISTRY**

89. In numerous instances, in connection with telemarketing, the Defendants have engaged in initiating or causing the initiation of outbound telephone calls to telephone numbers on the National DNC Registry to induce the purchase of goods or services, in violation of 16 C.F.R. § 310.4(b)(1)(iii)(B).

**COUNT III - FAILURE TO TRANSMIT CALLER ID**

90. In numerous instances, in connection with telemarketing, the Defendants have failed to transmit or cause to be transmitted to caller identification



services the telephone number and name of the telemarketer making the call, or the customer service number and name of the seller on whose behalf the telemarketer called, in violation of 16 C.F.R. § 310.4(a)(8).

COUNT IV—DEFENDANTS

ASSISTING AND FACILITATING ABUSIVE TELEMARKETING  
ACTS OR PRACTICES IN VIOLATION OF THE TELEMARKETING  
SALES RULE (TSR)

92. “Telemarketer[s]” engaged in “telemarketing,” as defined by the TSR, 16

C.F.R. § 310.2.

93. The Defendants provided substantial assistance or support:

(a) Initiated or caused the initiation of outbound telephone calls to telephone numbers on the National DNC Registry to induce the purchase of goods or services, in violation of 16 C.F.R. § 310.4(b)(1) (iii)(B);

(b) Failed to transmit or cause to be transmitted to caller identification services the telephone number and name of the telemarketer making the call, or the customer service number and name of the seller on whose behalf the telemarketer called, in violation of 16 C.F.R. § 310.4(a)(8).

PLAINTIFFS INJURY

94. The Plaintiff has suffered and will continue to suffer injury as a result of Defendants' violations of the TSR. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

95. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC.
96. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, and as implemented by 16 C.F.R. § 1.98(d), authorizes this Court to award monetary civil penalties of up to \$41,484 for each violation of the TSR. See 16 C.F.R. § 1.98(d) (2018). All TSR violations alleged in this Complaint, however, occurred while the civil penalty was capped at \$16,000 per violation. See 16 C.F.R. § 1.98(d) (2016).

Defendants' violations of the TSR were committed with the knowledge required by Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

97. This Court, in the exercise of its equitable jurisdiction, may award ancillary relief to prevent and remedy any violation of the TSR and the FTC Act.

PRAYER FOR RELIEF

98. WHEREFORE, the Plaintiff requests that this Court:

A. Enters a judgment against Defendants and in favor of Plaintiff for each violation alleged in this Complaint;

B. Award the Plaintiff monetary civil penalties from each Defendant for every violation of the; Violation of the Telephone Consumer Protection Act 1991(TCPA) 47 U.S.C.A. § 227 et seq., Sections 5(a), 5(m)(1)(A), 13(b), and 16(a) of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), Section 6 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (the "Telemarketing Act"), 15 U.S.C. § 6105, Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), FTC Telemarketing Sales Rule ("TSR"), as amended, 16 C.F.R. Part 310

C. Enter a permanent injunction to prevent future violations of the TSR and all other violations named and unnamed within paragraph (A) of page 31-32 of this complaint by the Defendants;


D. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

JURY DEMAND

The Plaintiff demands a trial by jury of all claims that can be so tried.

Dated: August 21, 2018 at Great Neck, New York

Jay Brodsky,

---

On behalf of himself, Plaintiff, ProSe